

**EXHIBIT 7**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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BARRY LINTON, )  
Plaintiff, )  
 ) C.A.No. 04-11362-RWZ  
vs. )  
 )  
NEW YORK LIFE INSURANCE AND)  
ANNUITY CORP., )  
Defendant. )  
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DEPOSITION of NEW YORK LIFE INSURANCE AND  
ANNUITY COMPANY by JOHN HESS, JR., called as a  
witness by and on behalf of the Plaintiff,  
pursuant to the applicable provisions of the  
Massachusetts Rules of Civil Procedure Rule  
30(b) (6), before Margaret M. Hoey, Certified  
Shorthand Reporter No. 114693 and Notary Public  
within and for the Commonwealth of Massachusetts,  
at the offices of Looney & Grossman, LLP, 101  
Arch Street, Boston, Massachusetts, on Tuesday,  
November 29, 2005, commencing at 9:00 a.m.

1                   twelve in a given policy year. So on the  
2                   thirteenth they could charge \$30 for a transfer  
3                   between investment divisions, right?

4     A.    We reserve the right to, yes.

5     Q.    Have they ever done that?

6     A.    No.

7     Q.    Is that the only right that's reserved for  
8                   transfers between investment divisions?

9     A.    No.

10    Q.    What are the other rights reserved under the  
11                   policy?

12    A.    I would point to the section that says 5.12. "If  
13                   you want to make a transfer, you must tell us in  
14                   a notice you sign which gives us the facts that  
15                   we need."

16    Q.    Typically what is that?

17    A.    Typically that would be a service form that would  
18                   be filled out by the policyowner giving some  
19                   information that he wants or she wants to happen.

20    Q.    A service form. Who provides that to the  
21                   policyowner?

22    A.    Either one or two places. Either the service  
23                   area, the Variable Products Service Center, or  
24                   the registered rep. I believe now it's on-line

1 as well.

2 Q. So you could do it on-line as well?

3 A. I believe now currently you can.

4 Q. What kind of information is typically on the  
5 service center?

6 MR. JONES: Objection. I think he said  
7 the form was available on-line. I want to be  
8 sure that the testimony is correct.

9 Q. What kind of information is on that form?

10 A. I don't know specifically the details of it  
11 because I don't have it in front of me, but you  
12 would have to tell us the policy number and the  
13 to and the from, which funds are you taking it  
14 from and putting it into. So the actual transfer  
15 amounts that would move and the dollar amount,  
16 what percentage.

17 Q. So if a policyowner filled out that form, then he  
18 was able to transfer -- have unlimited transfers  
19 between investment divisions?

20 A. Yes.

21 Q. Are there any other rights reserved to New York  
22 Life regarding transfers between investment  
23 divisions under the policy?

24 A. I don't believe so under the policy contract

1 itself.

2 Q. Is there any other document that would control  
3 transfers between investment divisions?

4 MR. KARMEN: What was the last  
5 question?

6 (Question read.)

7 MR. JONES: Objection. What do you  
8 mean control?

9 MR. HENDERSON: I was going off the  
10 response that he replied to the policy and he  
11 said not under the policy. I'm curious if  
12 there's other documents that would limit  
13 transfers -- maybe not control but would limit  
14 transfers if it's not the policy.

15 A. Not limit transfers, no. There wouldn't be any  
16 other form that would limit transfers.

17 Q. How about any other document?

18 A. Well, the prospectus outlines on a yearly basis  
19 what activities go on with transfers.

20 Q. But isn't the controlling document the policy?

21 MR. JONES: Objection.

22 Q. What governs the policy, this policy in  
23 particular?

24 A. The policy is just -- I'll specifically tell you.

1 Q. So your testimony is the only way he could make a  
2 transfer is by a signed piece of paper under the  
3 policy?

4 A. In this contract that's what it says, yes.

5 Q. So under this contract Mr. Linton could not make  
6 a transfer by telephone?

7 A. That's where I would consider those  
8 administrative adjustments that we have made  
9 through the years to offer different ways and  
10 based on what's out there for a client to make  
11 transfers if he wanted to we allowed it.

12 Q. So under the policy he could not make a transfer  
13 by telephone?

14 A. Under this contract we don't mention telephone,  
15 correct, but he can make a transfers if he  
16 submits the form here, the signed form. So  
17 that's an option that's always there for the  
18 policyowner.

19 Q. All right. Concerning market timing, let me try  
20 to rephrase this question a little bit. In 2003  
21 did anyone at New York Life that you are aware of  
22 come to the opinion that market timing was  
23 illegal?

24 A. Was illegal?

1 MR. JONES: Meaning is that correct, is  
2 that what the letter says?

3 Q. Is that correct what that sentence says?

4 A. Yes.

5 Q. What is your understanding of the PIN number in  
6 this context?

7 A. The PIN number was the telephone authorization  
8 process. And now it's a virtual service center.  
9 So you fill out a form and you say I would like  
10 to have the ability to access my activities on my  
11 policy this way, and we provide you a PIN so it  
12 gets you into the automatic systems that do the  
13 processing. So it is a way of identifying.

14 Q. Is that PIN number form -- what information is on  
15 that form, do you know?

16 A. I don't recall off the top of my head, no. When  
17 I see it I know that's the authorization form  
18 that you sign and say, yes, I would like access.

19 Q. So it has to be filled out by the policyholder?

20 A. And signed, correct.

21 Q. The next sentence says, "I will be forwarding  
22 copies of this letter over to you as well as a  
23 copy is being sent to DMS." Can you tell me what  
24 DMS is?

1 A. I don't know what DMS stands for. It's a process  
2 of that copies this material into the -- it's not  
3 paper anymore.

4 Q. What do you mean? The form is not paper anymore?

5 A. The letters themselves aren't kept in paper  
6 format. They are copied.

7 MR. JONES: Image.

8 A. Exactly. It's an imaging system.

9 Q. So the original copy that's signed by the  
10 policyholder is then scanned in?

11 A. Exactly.

12 MR. JONES: Objection. You are talking  
13 now about the warning letter?

14 MR. HENDERSON: Yes.

15 Q. Let me ask this question. Is the form that's  
16 filled out and signed by the policyholder for the  
17 PIN number, is that also scanned in?

18 A. I believe so, yes.

19 Q. Who is Michael Kern?

20 A. Michael Kern is an assistant. Not my assistant  
21 but an assistant in the Life Department, in the  
22 product development area of the Life Department.

23 Q. And he's familiar with the VUL policies?

24 A. Correct.